

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 1183 - SB 1257

March 20, 2013

SUMMARY OF BILL: Limits inpatient evaluation and treatment of a defendant charged with a misdemeanor offense who is believed to be incompetent to stand trial or whose mental capacity at the time of the offense is in question to a maximum of five days. Limits reporting of the progress of a defendant who has been ordered to judicial hospitalization to a defendant charged with a felony offense. Limits judicially ordered hospitalization of a misdemeanor defendant to a maximum of 10 days. Any inpatient evaluation or treatment of a misdemeanor defendant is required to cease upon dismissal of the misdemeanor charges.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue - \$753,200

Increase State Expenditures - \$662,000

Decrease Local Expenditures - \$753,200

Assumptions:

- Tenn. Code Ann. § 33-7-301(a) requires that a defendant charged with a criminal offense believed to be incompetent to stand trial or whose mental capacity at the time of the offense is in question receive an outpatient evaluation, and then upon recommendation of the evaluator, an inpatient evaluation and treatment of not more than 30 days.
- A court may order judicial hospitalization of a criminal defendant if the court determines that the defendant is incompetent to stand trial or that the defendant is competent to stand trial but a failure to hospitalize may cause serious harm to the defendant pursuant to Tenn. Code Ann. § 33-7-301(b). If the court finds that the defendant is likely to cause substantial harm to the defendant or others, the court may transfer the defendant to the custody of the Department of Mental Health and Substance Abuse Services (MHSAS) at a forensic services unit.
- Under Tenn. Code Ann. § 33-7-304, a county is responsible for the costs arising from the outpatient evaluation, inpatient evaluation and treatment for up to 30 days pursuant to Tenn. Code Ann. § 33-7-301(a), and any evaluation and treatment under Tenn. Code Ann. § 33-7-301(b) of a misdemeanor defendant.

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- According to MHSAS, there were an average of 502 outpatient evaluation admissions pursuant to Tenn. Code Ann. § 33-7-301 in FY09-10 through FY11-12.
- According to MHSAS, of those outpatient admissions, an average of 19 percent (95 admissions) were admitted for follow-up inpatient evaluation and treatment.
- According to MHSAS, an average of 41 percent (39 admissions) of the inpatient admissions pursuant to Tenn. Code Ann. § 33-7-301(a) were admitted to inpatient treatment pursuant to a court order under Tenn. Code Ann. § 33-7-301(b).
- According to MHSAS, it will be difficult to successfully complete an inpatient evaluation and treatment in five days. MHSAS estimates that four percent of the misdemeanor defendants admitted can be evaluated and treated in less than five days, that 33 percent can be successfully treated and evaluated in five days, and that 63 percent of misdemeanor defendants admitted for inpatient evaluation and treatment will be ordered hospitalized for further evaluation and treatment pursuant to Tenn. Code Ann. § 33-7-301(b).
- It is estimated that 57 misdemeanor defendants [(95 admissions – 4 misdemeanor defendants) x .63] will be judicially hospitalized pursuant to Tenn. Code Ann. § 33-7-301(b). Under current law, this treatment is indefinite and continues until the defendant is competent to stand trial.
- According to MHSAS, an RMHI cannot release a defendant after 10 days if the defendant poses a substantial likelihood of serious harm to the defendant or others. MHSAS estimates that three percent of these misdemeanor defendants will be successfully evaluated and treated in less than 10 days, that 25 percent will be successfully evaluated and treated in 10 days, and that 72 percent of the misdemeanor defendants will remain hospitalized at the RMHI pursuant to Title 33, Chapter 6, Part 5, until they can be released.
- It is estimated that 40 misdemeanor defendants [(57 defendants-2) x .72] will continue to be involuntarily treated pursuant to Title 33, Chapter 6, Part 5 for an average of 63 days.
- According to MHSAS, the current county contract rate for misdemeanor defendants is \$450 per day.
- Applying the admission limits in the bill, it is estimated that counties will be responsible for 469 days of evaluation and treatment [(91 defendants x 5 days) + (4 defendants x 3.5 days)] pursuant to Tenn. Code Ann. § 33-7-301(a) resulting in a total cost of \$211,050 (469 days x \$450).
- Applying the admission limits in the bill, it is estimated that counties will be responsible for 562 days of evaluation and treatment [(55 defendants x 10 days) + (2 defendants x 6 days) pursuant to Tenn. Code Ann. § 33-7-301(b) resulting in a total cost of \$252,900 (562 x \$450).
- It is estimated that applying the limits of the bill, the total cost to counties pursuant to Tenn. Code Ann. §§ 33-7-301(a) and (b) will be \$463,950.
- Total billings to the counties for these evaluations were \$1,026,900 in FY09-10, \$918,400 in FY10-11, and \$1,706,000 in FY11-12, an average of \$1,217,100 [(\$1,026,900 + \$918,400 + \$1,706,000)/3].
- The bill will result in a decrease in state revenue and a concurrent decrease in local expenditures of at least \$753,150 (\$1,217,100 - \$463,950).

- The average cost of inpatient treatment under Tenn. Code Ann. § 33-7-301(b) and Title 33, Chapter 6, Part 5 in FY11-12 was \$816.24.
- In FY11-12, the total actual cost for evaluation and treatment of misdemeanor defendants pursuant to Tenn. Code Ann. § 33-7-301(b) was \$3,100,895. The state share of that cost was \$1,394,895 (\$3,100,895 - \$1,706,000).
- It is estimated that continuing to treat the 40 misdemeanor defendants will result in a cost of \$2,056,925 (40 defendants x 63 days x \$816.24).
- It is estimated that the recurring increase in state expenditures will be \$662,030 (\$2,056,925 - \$1,394,895).
- These costs will fluctuate from year to year depending on the number of defendants who are charged with a misdemeanor and are ordered to undergo a mental health capacity evaluation. The amount of fluctuation is unknown, but it is reasonably assumed that the average recurring decrease in state revenue, the average recurring increase in state expenditures, and the average recurring decrease in local government expenditures, will be approximately \$700,000.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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